

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CAROLYN BETTON, et al.

Plaintiffs

V.

ST. LOUIS COUNTY, MISSOURI,

Defendant

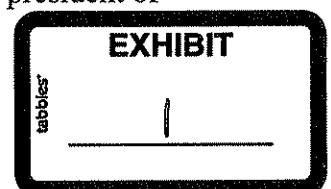
Case No. 4:05CV1455(JCH)

### Declaration of D. Eric Sowers

D. Eric Sowers states as follows:

1. I am a partner in the law firm of Sowers & Wolf, LLC, and lead trial counsel in the above-styled action. I make this Declaration of my own personal knowledge.

2. I am a 1974 graduate of the University of Missouri School of Law. I was admitted to the Missouri Bar and to the Western District of Missouri district court in 1975. In 1979 I was admitted to the U.S. Supreme Court, and in 1980 I was admitted to the United States Tax Court and the United States Court of Claims. In 1983 I was admitted to practice in the Eastern District of Missouri and the Eighth Circuit Court of Appeals. In 1999 I was admitted to the U.S. District Court for the Southern District of Illinois. I was president of



the 9<sup>th</sup> Judicial Circuit of the Missouri Bar in 1982, served on the Board of Governors for the Missouri Association of Trial Attorneys from 1983 through 1986, and have been selected as a Missouri/Kansas Superlawyer each consecutively since 2006. In 2005 I was selected as Missouri Lawyers' Weekly Lawyer of the Year for having obtained a writ of prohibition in *State ex rel. Cunningham v. Dean*, shaping discovery issues in employment cases under the Missouri Human Rights Act. I maintain an AV Preeminent rating from Martindale-Hubbell.

3. In 2005 and 2006, I was a guest lecturer at the UMC School of Law on employment law topics. I have presented seminars on trial practice in employment cases for the Lorman Business Center in 2002 and 2004, lectured on employment law for the Council on Education in Management on trends in employment law in 2005, and presented seminars for the Missouri Bar Association three times in 2005, once in 2006, and once in 2007. I also presented a seminar on jury selection in Chicago, Illinois, for the Illinois Association of Defense Lawyers, in 2007.

4. During my legal career, I estimate that I have tried 180 jury trials to verdict as either sole counsel or lead counsel. I have either been the principal attorney or directly participated in the appeal of 28 cases in the Missouri courts, 17 cases in the Eighth Circuit, and one case in the Arkansas Supreme Court. I have limited my practice primarily to employment law since 1991, although I have represented both plaintiffs and defendants in employment discrimination cases since 1985. I am a member of the Missouri Bar's Labor and Employment Law Committee.

5. My current hourly rate for representing clients in all matters is \$450.00 per hour. In addition to litigation, I also render legal services that are appropriately billed on an hourly basis, such as review and negotiation related to non-compete agreements and severance packages, and since 2008 I have billed and received \$450.00 per hour for legal services rendered.

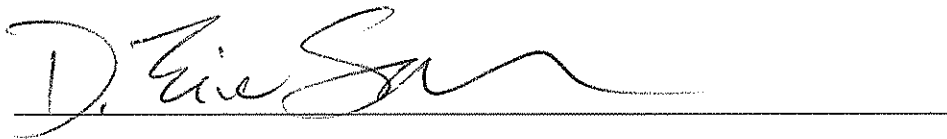
6. Preparation for the trial of this case required the examination of nearly 6,000 pages of documents, most of which were single sheets of paper, and none of which were indexed or paginated in any manner that would allow identification. Initially there were 1800 pages produced, which the firm of Sowers & Wolf paginated. Subsequent productions – one in the fall of 2009 and one after the 20-day pretrial compliance filing – consisted of approximately 3,000 pages. The second two productions were not paginated by Bates stamps, and in many instances consisted of unattached multi-page documents, and pages that were obviously out of order or sequence. The documents produced by the defendant were delivered in boxes, many without staples or paperclips, and without any reference to the plaintiffs' specific requests for production. Accordingly, in addition to the usual review of documents, it was necessary to attempt forensic recreation of documents to decide their significance. This process required literally spending hours at a time sequestered with documents, arranging and rearranging the pages, before studying the documents for content.

7. Contemporaneous time records were maintained for the preparation and trial of this case, listing the date, amount of time, and a description of the work performed. In

finalizing the attached spreadsheet, Ferne Wolf, Beth Fetterman and I reviewed our individual billings and deleted any duplicate billings unless they were billings for conferences in which we discussed strategy or a legal issue such that active participation by more than one person was essential. I also deleted any time that was specifically related to Cytoys Durham, since she was not a prevailing plaintiff.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2010.

A handwritten signature in black ink, appearing to read "D. Eric Sowers", is written over a horizontal line.

D. Eric Sowers

## D. Eric Sowers Time Records

3/27/09	0.3	Discussion of deposition of Assessor.
4/3/09	0.4	Conference with Ferne Wolf about discovery.
4/3/09		Conference with opposing counsel relating to case status, upcoming phone conference with the court, and review of discovery from Tolen files.
4/3/09	2.5	
4/3/09	0.2	Entry of appearance in pending lawsuit.
4/6/09		Phone conference with Judge Hamilton - discussion of submitting new Case Management Order. Discussion of general discovery issues.
4/16/09	0.4	
4/16/09	0.1	Phone call to Mike Shuman re: Scheduling Order. Left message.
4/17/09	0.3	Phone conference with Mike Shuman.
4/17/09		Review of FRCP; local rules; phone conference with Mike Schuman; draft of proposed Case Management Order; verify with Mike Schuman and Ferne Wolf; ECF filing.
	2.1	
4/19/09	0.1	Email exchange with Beth Fetterman, Ferne Wolf, concerning ECF formatting.
5/13/09		Office discovery planning meeting with Ferne Wolf - left before meeting concluded.
	1.7	
6/2/09		Meeting with Ferne Wolf and Beth Fetterman concerning discovery status and what remains to be done.
	0.3	
6/9/09	0.2	email from Mike. Shuman
6/18/09	0.2	Email from M. Shuman to Ferne Wolf and her comment re discovery.
6/26/09	0.2	Call to Ms. King concerning facts of case.
7/1/09		Two attempts to contact Mike Shuman concerning discovery motion to compel - left message to call me back.
	0.3	
7/2/09		File review and attempt to contact Mike Shuman concerning discovery motion to compel - left message to call me back.
	0.3	
7/3/09		File review for additional discovery requests. Review of approximately 1,000 pages of documentation, notes made.
	3.4	
7/4/09		Preparation of second interrogatories and requests for production; print and sign for mailing; email copies to Rufus Tate, Ferne Wolf and Beth Fetterman.
	3	
7/4/09		Check USA&M web site for form to submit for mediation, mediator to be Lisa Martin. Print form.
	0.4	
7/20/09		Charlene King material received from client; ADR referral received from court and reviewed.
	1.1	
7/22/09		Conference with Mike Shuman to select replacement mediator - Kim Kern - and in addition discovery issues.
	0.5	
7/31/09		Conf. with Kim Kern about mediation scheduling; review forms to designate mediator.
	1	
8/3/09		Call from USA&M regarding details of upcoming mediation.
	0.3	

## D. Eric Sowers Time Records

8/18/09	0.5	File review in order to prepare Motion to Compel.
8/19/09		File review, call from Mike Shuman; call from Bev at the court; conversation with Mike Shuman in which he says no additional Summary Judgment motion is forthcoming in the case; that he will respond to all discovery by Monday 8/23/09, and I agree to withdraw motion to compel when discovery is produced. Call to Bev to relay, and she says that on Tues. we are to call her if we are dissatisfied with discovery.
	2.2	
9/1/09	0.7	Phone with Bev and with Mike Shuman; email exchange with Mike Shuman re phone conference with Judge Hamilton on modification of scheduling order.
9/1/09	0.9	Phone with Jurleen Johnson re status of case.
9/2/09	0.9	Phone conference with Judge Hamilton and Mike Shuman; conference with Mike Shuman re mediation.
9/16/09		Meeting with clients to discuss case strategy, depositions, and to review all potential conflicts of interest.
	2.7	Obtain written agreement waiving conflict.
9/18/09		Phone with Opposing Counsel Mike Shuman asking for deposition dates, and copy of insurance policy; also asking for memorandum on discovery schedule correcting our files to reflect new cutoff.
	0.9	
10/2/09		Coordinating depositions with Michael Shuman and with clients. Arrangement with clients for efficient mechanism to transmit information between the attorneys and the clients.
	1.2	
10/9/09	0.8	File review in preparation for depositions
10/8/09	7.2	Preparations; travel to and from Clayton Government Building; deposition of Phil Muehlheausler; conference with clients; return to office.
10/12/09		Preparation; deposition of Karen Leahy; travel to and from Clayton for depositions.
	4	
10/16/09	4.9	Farmer, Surgener depositions, travel, preparation, and phone conference with potential witness, Mary Blunt.
11/5/09	3.8	Complete file review and preparation of position statement for mediator.
11/11/09	0.9	Phone to Carolyn Belton regarding upcoming mediation and what to expect.
11/12/09		Travel to USA&M; dispute with St. Louis County over whether or not the person with settlement authority is required to be present at mediation; legal research; arrival of County Counselor at approximately noon; opening statements; negotiations back and forth; unsuccessful mediation; return to office; conferences with Ferne Wolf and Beth Fetterman.
	10	
12/10/09		Phone with Michael Shuman and email to confirm regarding depositions of Mary Blunt, Robert Peterson and Johnita Grimm.
	0.4	



## D. Eric Sowers Time Records

1/27/10	6	Depositions of Robert Peterson and Mary Loring; conference call with court on defendant's motion to continue trial.
12/28/10	5.7	Travel, depositions in Clayton of Linda Edison and Mary Blunt, return to office, case discussion.
2/3/10	1.4	Commence file review for pretrial compliance; review of Complaint and Answer.
2/4/10	8.3	Review of documents for pretrial compliance listing of exhibits; marking exhibits and other documents; copies and highlighting of proposed Exhibits.
2/5/10	12.3	Review of documents and depositions for pretrial compliance; marking and copying of proposed exhibits; highlighting of exhibits; drafting jury instructions.
2/6/10	8	Continued review of exhibits and interrogatory answers; completion of identification of exhibits for use at trial, continued indexing of binders of documents.
2/7/10	4.6	Completion of marking and copying exhibits; completion of everything but scanning documents into pdf format and pacer filing; emails to oc asking for missing discovery.
2/8/10	9.2	Preparation of pretrial compliance materials; telephone conference with Mike Shuman regarding exchange of documentation, discussions with Ferne Wolf of County's refusal to stipulate that administrative prerequisites had been met. Review of stipulations that County IS willing to make.
2/9/10		Readthrough of all depositions for marking/identifying lines and pages; final review of exhibits; redaction of exhibits; review of defendant's pretrial compliance materials; assistance in loading jury instructions on pacer; review of defendant's proposed instructions; exchange of documents, matching County's proposed exhibits with documents that have been produced to ensure that we have received all of them during discovery. Attempt to determine if blank pages in proposed exhibits from County were copying errors or uncopied documents.
	8.3	
2/10/10	2.5	Review of defendant's proposed exhibits, defendant's proposed jury instructions.
2/10/10		Review of defendant's proposed deposition testimony, continued checking of defendant's produced exhibits, and defendant's pretrial identification of the plaintiffs' interrogatory answers in their entirety as "will read" evidence.
	7.3	
2/11/10	8.7	Review of exhibits listed by defendants.
2/12/10		Continuing review of exhibits listed by defendant, including group exhibits of "personnel files" which clearly are not complete personnel files of the five plaintiffs.
	6.8	
2/13/10	2.6	Deposition review; checking the portions of the depositions that defendants have identified as to be read into evidence; interrogatory review; instruction review.

## D. Eric Sowers Time Records

2/15/10		Trial preparation: review of depositions of defense witnesses for use in cross-examination; drafting questions for jury selection; review of documents for use in cross-examination of adverse witnesses.	2.8
2/16/10	3.1	Trial preparation: Continued deposition review for purposes of cross-examination; conference with Ferne Wolf concerning motions in limine.	
2/17/10	1.1	Deposition reviews for pretrial compliance and motions in limine.	
2/17/10	1.9	Motions in limine, proofing and hunting exhibits to be used as exhibits to motions in limine. Call to Bev to determine if hand-filing exhibits is necessary.	
2/18/10	6.1	Trial preparation; depositions and cross examination; document review.	
2/19/10	4.8	Trial preparation; document review and deposition review for pretrial compliance filings.	
2/22/10		Subpoenas; call to clerk; phone conference with Rufus Tate concerning trial strategy and coordinating his participation in witness preparation; conferences with Ferne Wolf re defendant's pretrial filings.	
2/23/10	3.4	Review of defendant's 10-day filing and proposed pictures for objection purposes; discussion of service of subpoenas for witnesses Peterson and Muehlheuser; legal research; strategy session with Rufus Tate and Ferne Wolf.	
2/24/10	7.1	Client preparation for trial. Direct examination preparation for Jerri Johnson and Colette Howard.	
2/25/10	8.2	Trial preparation; witness testimony preparation for Carolyn Betton, Charlene King, and Cytoys Durham; review of exhibits from plaintiffs and defendant.	
2/26/10		Client preparation for trial testimony; direct examinations for all 5 clients one at a time. Exhibit reviews; jury selection questions and notes for opening statement. Travel to and from courthouse and Final Pretrial Conference.	8.4
2/27/10	9.1	Client preparation for trial testimony by going through each client's entire direct examination; notes for opening statement; notes for cross examination.	
2/28/10		Client preparation for trial testimony - direct examinations of each plaintiff and cross examinations for each plaintiff; notes for cross examining defense witnesses; order of witnesses; finalize opening statement and jury selection questions.	10.7
3/1/10	16.1	Jury selection; opening statement; trial; travel back and forth to courthouse; preparation of cross examination for adverse witnesses Muehlheuser and Leahy.	
3/2/10	17.3	Travel to courthouse; trial; return to office; preparation of more cross examinations for adverse witnesses Peterson and Muehlheuser.	
3/3/10	15.4	Travel to courthouse; trial; return to office; preparation of more cross examinations for adverse witnesses Surgener and Edison.	



## D. Eric Sowers Time Records

3/4/10	16.1	Travel to courthouse; trial; return to office; preparation of more cross examinations for adverse witnesses.
3/5/10	4.7	Travel to courthouse; trial; early recess; return to office.
3/6/10	5.1	Work on cross examinations and closing argument.
3/7/10	5.8	Work on closing argument.
3/8/10	15.5	Trial; travel to and from courthouse; closing argument preparation.
3/10/10	3.1	Review of time sheets in preparation for fee petition; legal research; review of docket entries on PACER.
3/10/10	0.2	Receipt and review of judgment.
3/9/10	10.9	Closing argument; jury deliberations; conference with client, Ferne Wolf, and Rufus Tate.
3/15/2010	0.4	Call to John Foster to obtain contact info for Eric Tolen to offer opportunity to claim fees.
3/15/2010	0.3	Calls to Jurlean Johnson and Charlene King regarding post-trial motions.
3/15/2010	0.2	Call from Jurlean Johnson regarding post-trial motions.
3/15/2010	0.9	Review of hourly billing for accuracy.
	339.9	